

GENE D. KALE

IBLA 70-546

Decided May 8, 1972

Appeal from decision of Sacramento, California, land office, offering applicant one-year renewable lease under the Small Tract Act.

Affirmed.

Small Tract Act: Generally -- Small Tract Act: Lands Subject to

Where the claimant of an unpatented mining claim, using the claim for recreational purposes, was found to be an unqualified applicant under the Mining Claim Occupancy Act on the ground that he could not meet the residence requirement, it was proper and correct for the land office to offer him a one-year renewable lease for a .75-acre tract containing his improvements where it is determined that the land has public interest value for recreation, and state and county agencies have requested that it be retained in Federal ownership for recreation purposes.

APPEARANCES: Gene D. Kale, pro se.

OPINION BY MRS. LEWIS

This is an appeal from a letter decision of March 18, 1970, offering the appellant a one-year renewable lease for a .75-acre tract under the Small Tract Act of June 1, 1938, 52 Stat. 609, as amended, 43 U.S.C. 682a-682(e) (1970), upon certain specified terms and conditions.

In the instant appeal, appellant urges that the land "all around" the land in issue is either privately held or patented; that he did the assessment work and paid personal property tax; that this small portion of land is not suitable for any public use, and that he would never keep anyone from fishing this small river frontage.

It appears that Gene D. Kale acquired an unpatented mining claim on the Klamath River near Hornbrook, California, in 1958 by quit claim deed. He began using it for recreational purposes. On October 25, 1967, he filed application S 1127 to purchase a portion of the Bridge Placer Claim, the five acres on which his improvements are located, under the provisions of the Mining Claim Occupancy Act, 76 Stat. 1127, as amended, 30 U.S.C. § 701 et seq. (1970). On July 23, 1968, the application was rejected on the ground that he could not meet the residency requirement. The appellant then requested consideration to lease or purchase 5 acres or more under the "Small Claims Act."

On March 13, 1969, he was offered a one-year renewable small tract lease for a .75-acre tract containing his improvements subject to relinquishment of the Bridge Placer Mining Claim.

On December 8, 1969, the assistant director of the Bureau of Land Management wrote Congressman John E. Moss:

Within the last five years access for fishermen to the Klamath River has been blocked by those owning land along its banks for a fifteen-mile stretch below the Iron Gate Dam. As a result, the use has changed from "bank" fishing to "drift" fishing by boats. There are only three points between Iron Gate Dam and the U.S. Forest Service Tree of Heaven Campground twenty miles downstream which are presently available for launching and taking out boats. Of these, the land upon which Mr. Kale has his improvements is the most ideally located and provides the space needed for parking and camping. The California Department of Fish and Game, the State Wildlife Conservation Board and Siskiyou County have requested that the land be retained in Federal ownership for recreation purposes.

Because of the interest in using the land for public purposes, it was decided to offer Mr. Kale a lease to three-fourths of an acre upon which his improvements stand on a year to year basis until such time as the land can be improved for public purposes.

On March 18, 1970, the land office terminated its first offer and made another offer of a one-year renewable lease of the .75-acre tract containing his residence, subject to certain conditions. The appeal from this second offer is now before us.

Although the Small Tract Act of June 1, 1938, as amended, authorizes the Secretary of the Interior, in his discretion, to sell or lease tracts of land not exceeding 5 acres which he may classify as chiefly valuable for certain purposes, the regulation at 43 CFR 2233.0-2 (1970), now 2730.0-2(a) (1972), states:

[i]t is the program in the administration of the act * * * to promote the beneficial utilization of the public lands subject to the terms thereof, and at the same time to safeguard the public interest in the lands. To this end small tract activity shall be coordinated with interested local governmental agencies, and small tract sites will be considered in the light of their effect upon the conservation of natural resources and upon the communities or area involved * * *

In exercising the discretionary power granted him by Congress, the Secretary may refuse to consummate a sale at any time prior to the issuance of patent whenever he determines such action would be in the public interest. Willcoxson v. United States, 313 F.2d 884 (D.C. Cir. 1963), cert. denied, 373 U.S. 932 (1963).

The classification of land as suitable for disposition under the Small Tract Act does not preclude a subsequent cancellation of that classification when a different classification is found to be in the public interest. Cecil W. Hinshaw, A-30006 (July 23, 1964).

Clearly, on the facts of the instant case, the action of the land office in making the lease offer to appellant is to promote the beneficial utilization of the public lands involved and is to safeguard the public interest in the lands. Accordingly, we find that the action of the land office is proper and correct.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is affirmed and it is further decreed that the appellant has 30 days from the date of this decision

to comply with the conditions of the March 18, 1970, offer of the land office.

Anne Poindexter Lewis, Member

we concur:

Martin Ritvo, Member

Edward W. Stuebing, Member

